IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 395 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAKHABHAI @ GOPAL SONJ TADVI

Versus

COMMISSIONER OF POLICE VADODARA CITY

Appearance:

1. Special Civil Application No. 395 of 2004

MR ARVIND K THAKUR for Petitioner No. 1

MR KS TAMAYACHE for Petitioner No. 1

Ms P B Sheth, AGP for respondents

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 18/03/2004

ORAL JUDGEMENT

This is a petition under Article 226 of the Constitution of India for appropriate writ, order or

direction for quashing and setting aside an order dated 19.6.2003 passed by respondent No.1 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the ground that three offences were registered against the petitioner during the period from 24.5.2003 to 6.6.2003 which are at page no.21 at Annexure 'B'. Over and above the said prohibition cases, two unnamed witnesses had given statements against the petitioner which were also considered and, thereafter, detention order was passed. The petitioner has challenged the aforesaid order of the detention on various grounds. It has been contended that the petitioner has not committed any violation of public order and that the order has been passed against the petitioner without proper application of mind. That therefore, the order of detention is illegal and deserves to be set aside. The petitioner has, therefore, prayed that the impugned order of detention be set aside and the petitioner may be set at liberty forthwith.

2. On receiving the petition, rule was issued and in response to the service of notice of rule, Ms. P B Sheth, learned AGP has appeared. I have heard the learned Advocates for the parties and have perused the papers. During the course of hearing, learned Advocate for the petitioner has contended that one Suresh Govindbhai Tadvi was allegedly with the petitioner in the matter of committing the aforesaid offence and even the aforesaid two unnamed witnesses have also referred names of the said persons along with the petitioner. That therefore, the petitioner and Suresh Govindbhai Tadvi were sailing in the same boat and they were involved in the said offences.

3. It has also been argued by the learned Advocate for the petitioner that said Suresh Tadvi was also detained under the said Act by the said detaining authority and the said detenu had challenged his detention order by filing Special Civil Application No. Special Civil Application No.14892 of 2003. That by order dated 13.11.2003, this Court has quashed and set aside the said detention order. It has, therefore, been argued that the case of the petitioner is on par with the case of the said detenu and, therefore, on the principle of parity, the petition is required to be allowed and the order of the detention against the petitioner is required to be set aside. In support of the said argument, learned Advocate for the petitioner has submitted copy of the said order dated 13.11.2003 passed by this Court (Coram: Hon'ble Mr Justice A L Dave) in Special Civil

Application No.14892 of 2003. On going through the said judgment, it is clear that the petitioner and the detenu/petitioner in the said petition were involved in the same set of offences and the two unnamed witnesses had referred the petitioner as well as the said detenu as 'dangerous person'. The Court found that the detention order was illegal in respect of the said detenu. Since the petitioner as well as the said detenu have been involved in the said offence, the said witnesses have named both the persons as dangerous persons and when the detention order in respect of the said detenu has been set aside then on the principle of parity, the petitioner's case is required to be considered and the order of detention against the petitioner would also be required to be set aside.

4. In view of the above position, the present petition is allowed. The impugned order of detention dated 19.6.2003 passed by respondent No.1 against the petitioner-detenu is quashed and set aside. The petitioner-detenu Lakhabhai @ Gopal Sonji Tadvi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to the aforesaid extent. There shall be no order as to costs. D.S. permitted.

[D P Buch, J.]

msp